**Exhibit 23 A-H**: Lawsuit Settlement Memoranda from the Law Department

CITY OF DETROIT
LAW DEPARTMENT

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[redacted]

January 10, 2005

HONORABLE CITY COUNCIL

RE: [redacted]

CASE NO.: [redacted]
FILE NO.: [redacted]

We have reviewed the above-captioned lawsuit, the facts and particulars of which are set forth in a confidential memorandum that is being separately hand-delivered to each member of Your Honorable Body. From this review, it is our considered opinion that a settlement in the amount of [redacted] is in the best interest of the City of Detroit.

We, therefore, request authorization to settle this matter in the amount of [redacted] **No Cents** [redacted] and that Your Honorable Body direct the Finance Director to issue a draft payable to **Geoffrey Fieger and Steven D. Liddle, Attys and** [redacted] in the amount of [redacted] **Dollars and No Cents** [redacted], a draft payable to **Allstate Life Insurance Company** in the amount of [redacted] **Cents** ([redacted], a draft payable to **PASSCorp** in the amount of [redacted] **Dollars and No Cents** [redacted] and a draft payable to **Aviva London Assignment Corporaion** in the amount of [redacted] **and No Cents** [redacted], to be delivered upon receipt of a properly executed Release and appropriate settlement documents as to Lawsuit **Court of Appeals No.** [redacted] **Wayne County Circuit Court No.** [redacted] approved by the Law Department.

Respectfully submitted,

ALLAN M. CHARLTON
Chief Assistant Corporation Counsel

APPROVED: JAN 2 8 2005

RUTH C. CARTER
Corporation Counsel

000217

BY: Brenda E. Braceful
Brenda E. Braceful
Deputy Corporation Counsel

Attachments

[redacted]

# RESOLUTION

BY COUNCIL MEMBER: _____

RESOLVED, that settlement of the above matter be and is hereby authorized in the amount of [redacted] and NO CENTS [redacted]; and be it further

RESOLVED, that the Finance Director be and is hereby authorized and directed to draw a warrant upon the proper account in favor of **Geoffrey Fieger and Steven Liddle, Attorneys and** [redacted] in the amount of [redacted] **No Cents** [redacted], a draft payable to **Allstate Life Insurance Company** in the amount of **One Million Four Hundred Thousand Dollars and No Cents** [redacted], a draft payable to **PASSCorp** in the amount of [redacted] **Cents** [redacted] and a draft payable to **Aviva London Assignment Corporaion** in the amount of [redacted] in full payment for any and all claims which [redacted] may have against the City of Detroit by reason of alleged incident between a City of Detroit Police Officer [redacted] which resulted in fatal injuries sustained on or about September 13, 1998, and that said amount be paid upon receipt of appropriate settlement documents as to [redacted] approved by the Law Department.

**APPROVED:** JAN 2 8 2005

000218

RUTH C. CARTER
Corporation Counsel

BY: Brenda E. Braceful
Brenda E. Braceful
Deputy Corporation Counsel

[redacted]

PRIVILEGED/CONFIDENTIAL
ATTORNEY-CLIENT COMMUNICATION

# LAWSUIT SETTLEMENT MEMORANDUM

[redacted]

CASE NO. [redacted]
FILE NO. [redacted]

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CLAIMANT'S NAME: [redacted], Personal Representative for the Estate Of [redacted]

DATE OF INCIDENT: September 13, 1998 TIME: approximately 10:30 p.m.

LOCATION OF INCIDENT: [redacted] Street in Detroit

SUMMARY OF INCIDENT: This case was tried in June 2001 before a jury in Wayne County Circuit Court with Judge Pamela Harwood presiding, Geoffry Fieger representing Plaintiff and William Liedel representing the Defendants. The jury returned a verdict in favor of Plaintiff in the amount of [redacted]. Post trial motions, which are more fully explained below, were filed and heard and an appeal was taken, which is now pending in the Court of Appeals. The current exposure to the City including the judgment, costs and interest is [redacted]

Plaintiff's excessive force claim arises out of a shooting that took place on September 13, 1998 in the front yard of [redacted]. Off duty police officer, [redacted], shot and killed [redacted] drove his vehicle onto [redacted] front lawn after a verbal altercation between the two men. The parties disagreed about critical aspects of the incident.

[redacted] was a carpenter who lived on Salem street and heard tires squealing on the evening of the incident. He saw [redacted] wife pulling her car out of the driveway almost heading up into [redacted] driveway across the street. He saw someone in a red jeep cussing and swearing. [redacted] saw [redacted] wife back into her own driveway, park her car and run into the house. Her husband had pulled into the driveway just before the incident. [redacted] were yelling at each other. Eventually, the jeep started to inch away and [redacted] went to his car, opened the trunk, and removed a black case. [redacted] saw [redacted] take a handgun out of the bag and load it. [redacted] then yelled "If you want a f***ing piece of me, come back here." According to [redacted] was heading back down the driveway with the gun behind his back as he was yelling. The jeep returned to where [redacted] and the driver had been arguing. [redacted] never heard [redacted] identify himself as a police officer or explain that he was armed with a gun. [redacted] testified the driver of the jeep turned into the driveway and headed toward the pine tree. The jeep was not pointed toward [redacted] who raised his gun and shot four times at the jeep as it stalled out on the lawn. [redacted] was positive that

[redacted]

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Mrs. [redacted] had gone into the house before the shooting began.

Witnesses [redacted] testified that a jeep stopped in front of his neighbor's house, reversed and someone said "If you think you can, come and get me." [redacted] heard gunfire as soon as the jeep entered the [redacted] driveway. [redacted] did not see anyone next to the car but saw the shooter standing on the grass by the sidewalk. According to [redacted], the jeep could not have come close to hitting [redacted] and he thought that the momentum of the jeep turning into the driveway kept it going so that it drifted onto the lawn. On cross-examination, [redacted] explained that he did not actually hear the comment until the jeep was already backing up and conceded that in his statements to the police he said that the jeep turned to its left and sped onto [redacted] front lawn. [redacted] testified that he did not know if the person in the jeep was trying to run down the shooter or if the shooter was off to the side or behind the car..

[redacted] also witnessed the incident. She heard tires squealing and stepped out onto her porch where she saw [redacted] confronting a person in a jeep. [redacted] recalls a gray Toyota parked in the [redacted] driveway. [redacted] was walking down the driveway toward the street while he and the man in the jeep were yelling at each other. She never heard [redacted] say that he was a police officer, or that he had a gun, or that the other man was drunk and should go home. According to [redacted] the argument continued for at least five minutes until the man in the jeep started to drive away. [redacted] thought that [redacted] parting comments had "ticked off" the man in the jeep who put the jeep in reverse and pulled into [redacted] driveway. She testified that the jeep was almost at a stop by the time [redacted] ran down the driveway, jumped in front of and around the Jeep and fired a shot at the driver. [redacted] could not understand why [redacted] did not back up toward the tree rather than going in front of the Jeep. [redacted] testified that Mrs. [redacted] had already exited her car and taken her son into the back door of the [redacted] house. [redacted] took her children into her house out of concern for their welfare and called 911. [redacted] claimed that the police officer failed to accurately record her statement, which was supportive of [redacted] position.

[redacted] also witnessed the incident. She heard car engines, some screeching of tires, and two men yelling at each other. When she looked out her upstairs window, she saw a jeep jump the curb and heard gunshots. She did not see who was doing the shooting. A video of [redacted] interview with Channel 50 on the night of the incident was shown to the jury to show that, at the time, she opined that the jeep was attempting to run [redacted] over. She said that it "appeared as if the person driving the Jeep was trying to either road-rash somebody's yard or run somebody over." However, during trial, she explained that she had a different opinion based on testimony from other witnesses that she knew. She testified that she did not actually see the decedent try to run over [redacted] She also testified that the shots were simultaneous with the jeep driving on the lawn.

[redacted]

[redacted] testimony disputed the accounts of many of the witnesses. He conceded that he did not know any witness who saw his wife sitting in the car while the altercation took place, nor did he know of any witness, other than himself and his wife, who heard him identify himself as a police officer. [redacted] said that when he saw the brake lights go on and realized that the jeep was backing up, he told his wife to get back into the car. [redacted] conceded that he told [redacted] if he "wanted a piece of this" to come and get it, but that he did so because he was repeating what [redacted] had said to him. [redacted] explained that he made the statement before [redacted] drove down the street. [redacted] testified that he went to his vehicle to get out a black bag with a gun. He did not go to his wife and she did not take their daughter into the house because they didn't have time because his daughter was strapped into the car seat. [redacted] repeatedly told Fieger in response to questions that the other witnesses lied or changed their stories. He explained that he shot [redacted] because he feared for his life and that of his wife and child.

At trial, the witnesses presented differing accounts of the facts to the jury. The plaintiffs' witnesses testified that [redacted] shot [redacted] after a verbal altercation while he was entering the driveway and driving at a relatively slow rate of speed. [redacted] and his witnesses testified that [redacted] drove on the lawn and gunned his engine heading for [redacted] after the verbal altercation. The witnesses also disagreed concerning whether [redacted] wife remained in her car or had gone into the house before [redacted] returned to the scene. Experts also disagreed concerning the angle of the shots, the skid marks, and the jeep's movements.

Following a three week trial, the jury entered a verdict in favor of plaintiffs and against Goree. The verdict form posed the following questions:

1. Did the Defendant, [redacted], violate [redacted] constitutional right?

2. Was such violation of [redacted] constitutional right a proximate cause of injury or damage to [redacted]

3. What are the total amount of Plaintiff's damages?

4. Were the actions of [redacted] done maliciously, wantonly or oppressively as defined to you in these instructions?

5. What is the total amount of punitive damages you award against [redacted]

[redacted]

The jury checked the answer "Yes" to both of the first two questions and found [redacted] as the amount of damages. The jury answered question four "No." The jury left the last question blank because it answered "no" to question four.

After the verdict was announced and before entry of judgment, [redacted] moved for judgment notwithstanding the verdict on the basis of qualified immunity. The constitutional claim as pled and presented on behalf of the decedent was based on federal law. Thus, the effort was made to take advantage of the qualified immunity defense to a claim brought under 42 USC § 1983. The basic contention was that the jury's finding that [redacted] constitutional right was violated did not negate a conclusion that [redacted] use of force was protected by a qualified immunity. In other words, the law of excessive force was not so clearly established in these circumstances that [redacted] would have known that his conduct violated [redacted] rights. The trial court denied that motion in a written opinion that highlighted the plaintiff-favorable version of the facts and cast [redacted] conduct in a negative light.

Judgment was then entered in the amount of [redacted] together with costs, interest, and attorney fees. The judgment entitled plaintiff to actual costs pursuant to MCR 2.304(O). The plaintiff sought and obtained costs, interest, and attorney fees.

DAMAGES:

Judgment was entered in the amount of the verdict: [redacted]
Costs and mediation sanctions were ordered as follows:

- Deposition Transcript Fees [redacted]
- Attorney Fees [redacted]
- Witness & Process Server Fees [redacted]
- Expert Witness Fees [redacted]
- Total [redacted]
- Interest on the [redacted] judgment from 10/14/98 [redacted]
- Interest on Costs and Attorney Fees from 5/23/03 [redacted]
- Total judgment including costs and interest [redacted]

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[redacted]

LIABILITY/EVALUATION:

The issues raised on appeal were as follows:

- The trial court reversibly erred in ruling that [redacted] could not raise or argue self-defense in a fourth amendment excessive force case and in refusing to instruct the jury on it although that defense is appropriate as a method of showing that the force used was reasonable under the circumstances.

- The trial court reversibly erred in allowing testimony and argument that focused the jury's attention on whether [redacted] could have handled the situation differently by removing himself from the scene or defusing the incident and on information that was unknown to [redacted] at the time rather than on whether the use of deadly force was permissible under the fourth amendment because a reasonable officer in [redacted] shoes would have believed that [redacted] posed a substantial risk of serious harm to himself or others.

- The trial court reversibly erred in refusing to permit [redacted] to read paragraphs from [redacted]'s complaint that alleged that [redacted] identified himself as a police officer to rebut plaintiff's theme that he had failed to do so and when, at the same time, the trial court held that defendant was bound by his admission that [redacted] acted under color of law.

- The trial court reversibly erred in denying a new trial where counsel engaged in a calculated course of misconduct that affected the outcome by making improper arguments, disrupting defense counsel's questioning of witnesses, calling the shooting an execution, inaccurately characterizing testimony contrary to the facts in the record, referencing conspiracies, cover-ups, and publicized incidents involving other police forces around the country, arguing that plaintiff's counsel stands for justice and that the jury's verdict would be a symbol, and introducing race into the discussion when it was not an issue.

- Remittitur or a new trial was required because the jury's verdict awarded excessive damages based on passion or prejudice rather than the testimony at trial, which showed that [redacted] had failed to support his children, had difficulty keeping jobs, and suffered no conscious pain and suffering and the six million dollar award was outside the range of the evidence and significantly more than has been awarded in comparable circumstances.

[redacted]

- The trial court reversibly erred in denying [redacted] the protection of qualified immunity where [redacted] reasonably could have thought that firing his weapon at [redacted] was constitutionally permissible because [redacted] was driving a jeep toward him and making a move that appeared to be to retrieve a weapon and no clearly established law established that a shooting in these circumstances violates the fourth amendment.

The likelihood of success on the issues raised is considerably less than 50%. The Court of Appeals affirms approximately 85% of the cases that come before it. Thus, the ordinary appeal has odds of success of only 15%. Little in this case takes it out of those odds.

New trial issues include various errors in legal rulings, instructions, trial misconduct, and related errors. The standard of review for a motion for new trial on the basis of attorney misconduct is whether there was error, whether it was harmless, and if any error was properly preserved. *Badalamenti v William Beaumont Hospital*, 237 Mich App 278, 290-291; 602 NW2d 854 (1999).

Although there is a basis for seeking a new trial on the basis of Attorney Fieger's discussion of alleged cover-ups by the Los Angeles police department, and the recent Cincinnati police shootings, and the New York incident involving Dialo, an appellate court is likely to conclude that these instances of misconduct were not sufficient to taint the trial and resulting verdict. Similarly, Attorney Fieger and Miller's distracting conduct during trial is readily dismissed by an appellate court as objectionable but not sufficient to take away a jury verdict. Attorney Fieger's use of the term "execution" likewise was objectionable. But it arguably was not a sufficiently large part of the trial to have tainted the verdict.

The transcript here does not read as poorly as did the transcript in either *Gilbert* or *Badalamenti* and an appellate court can readily distinguish those cases from this one. It is easy for an appellate panel to chastise the plaintiff's attorney and then announce that the misconduct or prejudicial behavior or argument did not rise to the level necessary to overturn the outcome. In this case, given the highly contested nature of the testimony, the potential for concluding that [redacted] was acting out of anger against someone who had insulted his wife, and the deferential standard of review, our appellate odds are not strong. While *Badalamenti* and *Gilbert* provide a basis for seeking a new trial, many appellate judges remain reluctant to throw out a trial and resulting verdict even in the face of rather egregious misconduct when the jury was presented with conflicting facts, as they were here.

As to remittitur, the jury verdict for a death in which the decedent leaves three minor children is not so large that relief is likely on appeal.



[redacted]

There are a number of intangible factors that will complicate the City's position on appeal and make it difficult to prevail. First, state court appellate judges tend to be less familiar with constitutional law and more frequently confuse the standards with those they more typically see in state law tort and negligence actions. Thus, the nuances of the admissibility of evidence relating to self-defense and proofs of what an officer could have done to avoid the situation may be lost on the Court. In addition, because the incident has a "personal" aspect to it, an appellate court may be less sympathetic than in the ordinary case. Finally, if the City prevails, the relief is likely to be a new trial rather than a dismissal in favor of the officer. Thus, a new trial will be necessary and it may result in an adverse verdict as well. In the meantime, interest will have continued to accrue thus eating up any potential savings from a lower verdict. And, of course, it is always possible that the verdict in a second trial would be higher. Given these difficulties, we believe that the settlement is advantageous.

AMOUNT OF SETTLEMENT RECOMMENDED: Settlement discussions have been conducted on this case over a period of months. It has not been until the most recent negotiations that Plaintiff's counsel has been willing to move below the jury award of [redacted] With pressure from his clients, he has agreed to accept [redacted] in settlement of the case. Settlement in the amount of [redacted] is recommended because the chances of prevailing in the Court of Appeals are relatively low and this amount represents a savings of almost [redacted] on the current value of the judgment. In addition, further delay in the appellate proceedings will result in a significant increase in the amount owed because of the interest accrual. In the proposed settlement agreement [redacted] would be placed into a structured settlement for the benefit of the deceased's minor children. Resolution of the case at this time, before a probable adverse ruling from the Court of Appeals, is in the best interest of the City.

RISK MANAGEMENT MEASURES: Police litigation matters are regularly reviewed with Police Department representatives by the Law Department's Police Legal Advisor for, among other things, risk management implications.

MARY MASSARON ROSS
Special Assistant Corporation Counsel
LAWSUIT SETTLEMENT
[redacted]



[redacted]

PRIVILEGED AND CONFIDENTIAL
ATTORNEY-CLIENT
COMMUNICATION AND ATTORNEY
WORK PRODUCT

# LAWSUIT SETTLEMENT MEMORANDUM

[redacted] V CITY OF DETROIT

CASE NO. [redacted]

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**CLAIMANT'S NAME:** [redacted]

**SUMMARY OF INCIDENT:**
The above-entitled lawsuit was filed on [redacted] in Wayne County Circuit Court. The lawsuit alleged that the Plaintiff was improperly terminated on [redacted], from her position as a Legislative Assistant for [redacted] Plaintiff alleged that this termination violated the Family Medical Leave Act (FMLA) and the Michigan Persons with Disabilities Civil Rights Act.

The facts indicate that Plaintiff was hired as a Legislative Assistant for [redacted] effective January 7, 2002. Plaintiff was an at-will employee. Plaintiff took a sick day on April 22, 2002. In the week of June 10, 2002, Plaintiff began to have problems for hypertension. She called in sick on June 10, 14, 17, and from June 18 through June 24, 2002. Plaintiff was advised by her physician that she could return on June 24, 2002. In lieu of sick days for June 14, 17 and 18, Plaintiff chose to use her vacation days, per the approval of [redacted] Plaintiff called in sick on July 15, 2002. On August 14, 2002, Plaintiff took four (4) hours sick time. On September 23, 2002, and October 25, 2002, Plaintiff took sick days to be with her daughter who had gastrointestinal problems. Plaintiff also took vacation days on October 18 and October 21 through October 24, 2002, in lieu of sick days.

On November 21, 2002, Plaintiff was supposed to be representing [redacted] at a grand opening of a restaurant. There was a dispute as to whether or not she actually attended the grand opening. Furthermore, Plaintiff took compensatory (comp) time to take the rest of the day off without requesting for it in advance. By taking the rest of the time off that day, Plaintiff missed a mandatory staff meeting that afternoon. Plaintiff received a verbal reprimand and a written reprimand from [redacted] regarding her excessive absenteeism and her misconduct on November 21, 2002.

Despite her absenteeism and November misconduct, [redacted] testified that Plaintiff's overall work performance was good when she was at work. Also, it was his standard practice to give raises as a cost of living adjustment. Thus, he gave her a raise which was approximately seven percent (7%) of her salary in January, 2003.

Plaintiff took sick days from January 27 through January 29, 2003. One day for car trouble, and two days for her own illness. Plaintiff then took sick days on February 13, 19, and 24, 2003, to tend to her sick daughter. She took a vacation day in lieu of a sick day on February 20, 2003. On March 7, 2003, Plaintiff took a vacation day to attend a funeral. On March 11, 2003, Plaintiff was at Children's Hospital of Michigan Emergency Department to take care of her daughter.



[redacted]

On March 24, 2003, [redacted] sent the Plaintiff a letter outlining several items. He requested medical documentation regarding her daughter's condition.[1] He also warned her that she was close to exhausting her sick and vacation days. He discussed her absences due to her daughter's illness, car trouble, and funeral leave and reminded her that despite the unfortunate circumstances, she still had an obligation to the taxpayers. Lastly, Plaintiff was reminded of his November 22, 2002, letter warning her of her excessive absenteeism.

[redacted] testified in his deposition that Plaintiff's work performance was again an issue on March 27, 2003, when she sent him an e-mail tantamount to insubordination. On that same date, Councilman Cockrel sent her a letter reprimanding her regarding her e-mail and requesting a letter of resignation. However, Plaintiff was not terminated for this incident and continued to be employed under [redacted], who testified that he understood that the e-mail was not intended for him and that it was intended to be sent to Plaintiff's friend. He also testified that after his letter and his conversation with Plaintiff, her work performance was not an issue.

On April 15, 2003, Plaintiff used a sick day to be with her daughter who was undergoing an esophagogastroduodenoscopy. [redacted] was notified of her anticipated absence via e-mail on April 11, 2003. In that same e-mail, [redacted] was advised of a future surgery for her daughter in August.

On Saturday, April 26, 2003, Plaintiff was treated for chronic bronchitis and hypertension, for which her physician indicated that she could return to work on May 1, 2003. However, her condition persisted and deteriorated until she was admitted to Botsford Hospital. On May 7, 2003, she was discharged from Botsford Hospital with instructions to return to work on May 12, 2003. On May 11, 2003, Plaintiff had an adverse reaction to her medication which caused her to fall down the stairs at her home and fractured her left fibula. She was treated on May 12, 2003 at Urgent Care where she received a temporary air cast. On May 14, 2003, she was seen by an orthopedic surgeon who treated her and gave her a fiberglass cast.

Plaintiff took April 28, 2003, as a sick day. From April 29 through May 2, 2003, Plaintiff took vacation days. On May 5, 2003, Plaintiff took a half day vacation. From May 6 through May 9, 2003, Plaintiff was carried absent with no pay because she had exhausted her sick and vacation days.

On May 14, 2003, Plaintiff returned to work and was immediately terminated. However, [redacted] approved severance pay and continuation of benefits until May 30, 2003. On May 14, 2003, [redacted] sent a letter to [redacted] advising her that Plaintiff had been terminated for her chronic pattern of absenteeism.

Plaintiff's daughter was scheduled for a second surgery in July; however, it was re-scheduled for October 2003 because she no longer had health insurance.

LEGAL ANALYSIS

[1] [redacted] file indicates that medical documentation was provided regarding Plaintiff's illness as well as her daughter's illness.

The Family Medical Leave Act (FMLA) provides up to twelve (12) weeks of unpaid leave, within a twelve (12) month-period, from work for an employee in the event of the employee's or the employee's family member's serious, life-interrupting medical problem or occurrence. The term serious health condition covers conditions or illnesses that affect an employee's or employee's family member's health to the extent that she/he must be absent from work on a recurring basis or for more than a few days for treatment or recovery. Specifically, a serious health condition is defined as "an illness, injury, impairment, or physical or mental condition" that involves (1) inpatient care in a hospital, hospice, or residential medical care facility or (2) continuing treatment by a health care provider. "In patient care" requires an overnight stay in a hospital or similar facility for medical treatment. "Treatments" can be one of the following: (1) two or more visits by the afflicted person with the health care provider, (2) two or more treatments by a provider of health care services under the order or referral of a health care provider, or (3) one treatment by the health care provider that results in a regimen of continuing treatment (e.g., a course of medication or therapy) under the supervision of the health care provider.

The FMLA applies to employers with fifty (50) or more employees. In this case, the City of Detroit certainly has more than 50 employees.

An employee is eligible for FMLA leave if the employee has been employed by the covered employer for at least twelve (12) months and has worked for the employer for at least one thousand two hundred fifty (1,250) hours over the previous 12-month period. From January 7, 2002 through January 6, 2003, Plaintiff had worked one thousand seven hundred and six (1706) hours. Therefore, Plaintiff was eligible for FMLA leave.

Generally, FMLA leave applies when an eligible employee requests it. However, there are no specific words that an employee must state. The employee does not have to say, "I would like to take a leave under FMLA for my illness." Rather, when the employee calls in sick and advises the employer of his/her medical condition, the employer is deemed to be on notice that the FMLA leave may be applied. Moreover, when the employer requests and receives medical documentation regarding the employee's medical condition, the FMLA leave is to be applied.

In this case, Plaintiff provided medical documentation for her absences due to her medical condition and her daughter's medical condition. Plaintiff provided documentation that she had sought treatment for her chronic bronchitis and hypertension. She provided documentation that she was hospitalized for her illnesses, including documentation for her fractured fibula. Moreover, Plaintiff provided documentation of her daughter's acute gastroenteritis, her daughter's hospitalization, her daughter's esophagogastroduodenoscopy, her daughter's medication, and her daughter's need for future surgery. Furthermore, the medical documentation showed her daughter was prevented from engaging in her regularly conducted activities for more than two (2) consecutive days, and that she was undergoing continuing treatment.

Plaintiff's absences during the period of January through May 2003, were protected under the FMLA. An employer is not permitted to take adverse employment action against an employee that rests in whole or in part on absences protected by the FMLA. In this case, the March 24, 2003, letter clearly demonstrates the employer's frustration, in part because of the Plaintiff's absences due to her daughter's illness. Lastly, the letter provided to [redacted] clearly show that Plaintiff's termination was due to her chronic pattern of absenteeism.

If the termination was for her poor work performance and insubordination she should have been terminated immediately for those reasons. However, she was not. In fact, as an at-will

employee there should not have been any reason provided. She should have been terminated. The problem in this case was that there was a reason provided. Even if her termination was not based solely because of her absenteeism due to her and her daughter's health issues, the fact remains that it was based in part due to it. Therefore, it is likely that a jury will rule in the Plaintiff's favor for her FMLA violation claim.

Plaintiff also has a claim for violation of her rights under the Persons With Disabilities Civil Rights Act (PDCRA). Plaintiff asserts that she was terminated because of [redacted] perception that she was not physically capable of performing the duties of her position. Plaintiff asserts that [redacted] was is not permitted to discharge her because of anticipated future absences. She alleges that his decision to dismiss her was based on an incorrect perception that she would incur future absences because of the medical conditions. If the jury believes the Plaintiff, the City would be liable for violating the PDCRA.

## DAMAGES

Plaintiff's damages under the FMLA are limited to an award of back-pay and benefits. However, under the PDCRA claim, Plaintiff could obtain damages for emotional distress as well.

Plaintiff has been out of work for approximately thirty-seven (37) months. She was making [redacted] when she was terminated. Additionally, she was receiving a pay increase commensurate to cost of living adjustments. Her initial pay increase was seven percent (7%). Assuming a conservative adjustment of five percent (5%), Plaintiff's back-pay damage alone is [redacted] In addition back-pay, Plaintiff would be entitled to the loss of benefits. Plaintiff's daughter was not able to undergo a necessary surgical procedure because of the loss of medical benefits.

The liquidated damages, attorney fees, and the back-pay damages would be close to [redacted]. However, emotional damages, based on how a jury could view the case, would cause the projected damages to increase. Therefore, in the best interest of the City, a settlement consisting of: [redacted] (2) the removal of any record of termination, and (3) the right to apply to any future job openings within the City (should she be eligible and/or qualified).

## AMOUNT OF SETTLEMENT RECOMMENDED: [redacted]

[redacted]
LAWSUIT SETTLEMENT
[redacted]



[redacted]

JCC 7/26/2006

Law Department
July 10, 2006

Honorable City Council:

Re: [redacted] vs. City of Detroit, Wayne County Circuit Court [redacted]

We have reviewed the above-captioned suit, the facts and particulars of which are set forth in a memorandum submitted under separate cover. From this review, it is our considered opinion that a settlement in the amount of [redacted] removal of any record of termination, and the right to apply to any future job openings within the City of Detroit (should she be eligible and/or qualified) is in the best interests of the City of Detroit.

We, therefore, request your Honorable Body to authorize and direct the Finance Director to issue her draft in the amount of [redacted] payable to [redacted] and her attorney Jeffrey Ellison, to be delivered upon receipt of properly executed Releases and a Stipulation and Order of Dismissal of Lawsuit Number [redacted]

Respectfully submitted,
GRANT HA
Assistant Corporation Counsel

Approved:
JOHN E. JOHNSON, JR.
Corporation Counsel
By: VALERIE A. COLBERT-OSAMUEDE
Chief Assistant
Corporation Counsel

By Council Member Conyers:

Resolved, That settlement of the above matter be and is hereby authorized in the amount of [redacted], removal of any record of termination, and the right to apply to any future job openings within the City of Detroit (should she be eligible and/or qualified); and be it further

Resolved, That the Finance Director be and is hereby authorized and directed to draw a warrant upon the proper account in favor of [redacted] and her attorney, Jeffrey Ellison, in the amount of [redacted] in full payment for any and all claims and/or damages which [redacted] may have against the City of Detroit by reason of the City of Detroit's alleged discrimination and that said amount be paid upon the presentation of releases and a discontinuance of Civil Action No. [redacted] satisfactory to the Law Department.

Approved:
JOHN E. JOHNSON, JR.
Corporation Counsel
By: VALERIE A. COLBERT-OSAMUEDE
Chief Assistant
Corporation Counsel

Adopted as follows:

Yeas — Council Members S. Cockrel, Collins, Conyers, Jones, Kenyatta, Reeves, Tinsley-Talabi, Watson, and President K. Cockrel, Jr. — 9.

Nays — None.

000230

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

[redacted]

Plaintiff,

v.

Case No. [redacted]
Hon. Warfield Moore

CITY OF DETROIT,

Defendant.

| | |
|---|---|
| JEFFREY ELLISON, P.C.<br>Jeffrey Ellison (P35735)<br>Attorney for Plaintiff<br>510 Highland Ave., Ste. 325<br>Milford, MI 48381<br>(810) 632-6470 | CITY OF DETROIT LAW DEPARTMENT<br>Grant Ha (P53403)<br>Attorney for Defendant City of Detroit<br>1650 First National Building<br>660 Woodward Avenue<br>Detroit, MI 48226<br>(313) 237-5036 |

## SETTLEMENT AGREEMENT AND FULL AND COMPLETE RELEASE OF LIABILITY

THIS SETTLEMENT AGREEMENT AND GENERAL RELEASE ("Agreement") is entered into this 9th day of August, 2006, by and between: [redacted] and the City of Detroit, and all employees and agents of the City of Detroit, (hereinafter referred to as the "City").

The parties to this Agreement acknowledge the following set of facts:

1. For and in consideration of the payment of [redacted] by the City to [redacted] and Jeffrey Ellison, her attorney, AND for and in consideration of THE REMOVAL OF ANY RECORD OF TERMINATION, AND for and in consideration of THE RIGHT TO APPLY TO ANY FUTURE JOB OPENINGS WITHIN THE CITY OF DETROIT (SHOULD SHE BE ELIGIBLE AND/OR QUALIFIED), on behalf of herself, her family, dependents, executors, administrators and assigns hereby release, demise, acquit and forever discharge the City and all its past and present agents, servants, employees, officers, officials, and attorneys (in their individual

[redacted]

and representative capacities) from ANY AND ALL causes of action, suits, grievances, claims and demands whatsoever which Plaintiff ever had or now has against the City directly or indirectly for, upon, or by reason of any matter, cause or thing whatsoever, whether known or unknown, including but not limited to, all claims alleging discrimination of ANY KIND. The Finance Director shall make the payment of [redacted] described hereunder in an amount in the following distribution:

[redacted] payable to "[redacted] and Jeffrey Ellison."

Plaintiff agrees to indemnify and hold the City of Detroit harmless from federal, state, or local claims for taxes due as a result of the settlement payment referred to above.

2. Plaintiff understands and agrees that this is a total and complete release by her of all claims which she has against the City, even though there may be facts and consequences of facts which are unknown to Plaintiff or the City.

3. The City has answered the above recited lawsuit, denying that its conduct was in any way wrongful or in violation of the law, but rather that its policy and treatment of Plaintiff was proper and the City continues by this Agreement its denial that its conduct has been in any way wrongful or in violation of law and all claims made by Plaintiff were disputed and this settlement is an attempt to compromise said claims. Plaintiff agrees not to disclose any of the terms of this settlement agreement.

4. Plaintiff hereby agrees that she will forthwith request the dismissal with prejudice of any and all complaints and administrative actions she may have filed with any court or administrative agency against the City, including but not limited to the United States Equal Employment Opportunity Commission and the Michigan Department of Civil Rights. Plaintiff specifically acknowledges that she is not entitled to any payment herein until all actions brought by Plaintiff or on her behalf are dismissed with prejudice.

5. Plaintiff acknowledges that she fully understands and agrees that this

Agreement may be pleaded by the City as a complete defense to any claim or entitlement which hereafter may be asserted by Plaintiff or other persons or agencies on her behalf in any suit or claim against the City for or on account of any matter or thing whatsoever arising out of Plaintiff's employment with the City of Detroit.

6. Breach of any of the provisions of this Agreement shall be deemed a material breach of this Agreement and entitle the City of Detroit to file an action to recover all monies paid to Plaintiff and her attorney under the terms of this Agreement.

[redacted] ACKNOWLEDGES THAT SHE HAS READ THE TERMS OF THIS AGREEMENT, THAT SHE HAS CONSULTED WITH HER ATTORNEY, JEFFREY ELLISON, WHO HAS READ AND EXPLAINED TO PLAINTIFF THE TERMS OF THIS AGREEMENT. THAT WITH FULL UNDERSTANDING OF ALL OF THE TERMS OF THIS AGREEMENT, PLAINTIFF VOLUNTARILY AND WITH FULL KNOWLEDGE OF THE SIGNIFICANCE AND CONSEQUENCES OF THIS AGREEMENT AGREE TO BE SO BOUND.

EXECUTED AS FOLLOWS:

Signed this 9th day of August, 2006 In the presence of

[redacted]
Witness

[redacted]
Plaintiff
SS# [redacted]

Witness

JEFFREY ELLISON
Attorney for Plaintiff

STATE OF MICHIGAN [redacted] )
NOTARY PUBLIC WAYNE CO., MI )SS
COUNTY OF MY COMMISSION EXPIRES Nov 27, 2007

On , 2006, before me personally appeared the ~~above-named parties~~, to me personally known to be the same person(s) described in and who affixed the signature(s) upon the foregoing instrument in my presence and who stated on oath that each has read or has heard read the contents thereof which has been understood by each and that such contents are true and that same has been executed as the free and voluntary act of the signer(s) thereof.

[redacted]

Subscribed and sworn to before me
this 9th day of August, 2006

Notary Public, Wayne, MI
My commission expires:

NOTARY PUBLIC WAYNE CO., MI
MY COMMISSION EXPIRES Nov 27, 2007

000239

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# LAWSUIT SETTLEMENT MEMORANDUM

[redacted] and [redacted]
[redacted]" v CITY OF DETROIT
CASE NO. [redacted]
FILE NO. [redacted]
and
[redacted] and [redacted]
[redacted] v. CITY OF DETROIT, et al.
CASE NO. [redacted]
FILE NO. [redacted]

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**CLAIMANT'S NAME:** [redacted] and [redacted]

**DATE OF INCIDENT:** December 10, 1997 and March 3, 1999

**LOCATION OF INCIDENT:** [redacted] and [redacted]

**SUMMARY OF INCIDENT:** This case arises from the demolition of two structures in the City of Detroit by order of the Detroit City Council pursuant to Detroit Ordinance 290-H. One of the buildings was a single family dwelling at [redacted] on which Plaintiff [redacted] had acquired a tax lien that ultimately gave her title. The second was a five-story apartment building at [redacted] owned at the time of demolition by [redacted] a company formed and predominately owned by [redacted].

In each instance, [redacted] became the titled owner *after* the building was identified as subject to demolition under Detroit City Ordinance, 290-H § 12-11-28.4 and after the record owners were notified of the proceedings and hearings required by the ordinance and after the City filed and recorded a Lis Pendens with the Wayne County Registrar of Deeds on each property. (Unfortunately the lis pendens had expired on the [redacted] property by the time the actual demolition took place.)

The uncontested facts indicate that proceedings by the City to demolish [redacted] began a early as 1989 when the City recorded a Lis Pendens against the property with Wayne County Register of Deeds. The City Council ordered the demolition of the building on or about July 19, 1990. Plaintiff [redacted] became the owner of the building in June 1997, apparently without performing a title search. Plaintiff [redacted] then quit-claimed the property to [redacted], and [redacted] recorded its deed on February 26, 1998. The demolition was completed March 3, 1999, ten years after originally ordered and without any additional notice.

The City started proceedings to demolish the [redacted] property in 1994, and filed a Lis Pendens on January 11, 1995. Again, without performing a title search the Plaintiff acquired her interest in the

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[redacted] property by purchasing the tax lien for the property in 1997 and filed a quiet title action in 1998. Plaintiff [redacted] received a May 5, 1999 judgment quieting title in the property in Wayne County Circuit Court. Ironically, [redacted] was demolished on December 10, 1997 before the Plaintiff filed suit to quiet title, and six years before Plaintiff's complaint in the instant case.

On December 20, 2001 Plaintiff filed a federal court complaint against the City and several individuals alleging constitutional claims, inverse condemnation, trespass, gross negligence and violations under the Michigan Freedom of Information Act. Ultimately, the Court dismissed several counts on the merits, but the inverse condemnation claim was dismissed without prejudice as "unripe" for failure of the Plaintiff to exhaust state remedies.

The remaining claim went to a jury that in November 2003 found that Plaintiff had not been deprived of her 14th Amendment right to Due Process with regard to the [redacted] property. Moreover the jury concluded that the City was entitled to [redacted] on its counterclaims for the cost of demolishing the building. After the jury verdict the Michigan Court of Appeals held in an unpublished opinion that a lis pendens expires after three years, an issue raised in this case. The jury verdict has now been appealed in federal court.

The present case was filed after the inverse condemnation claim was dismissed and seeks to exhaust the remaining remedy arguably available to the Plaintiff, a taking or inverse condemnation claim seeking recovery for the demolition of the two properties.

**MEDIATION:** [redacted]

**LIABILITY/EVALUATION:** The Plaintiff claims that the City's proceedings under the dangerous building ordinance is a *de facto* taking under The Michigan Constitution, for which the Plaintiff is entitled to just compensation. There is no definitive case law at the Court of Appeals level that has applied this legal theory to the dangerous building ordinance. While we have a good argument that the proceedings under the ordinance are a legitimate exercise of the City's police power and no compensation is therefore owed, we were unable to prevail on a Motion for Summary Disposition at the trial court level, consequently this issue would be decided by the jury.

Given the prospect of a second trial and appeal, and the risk of conflicting and unhelpful decisions after appeal, a chance to dispose of both cases is worth the cost. Plaintiff has agreed to this settlement only after several settlement conference before the Wayne Circuit Court.

**AMOUNT OF SETTLEMENT RECOMMENDED:** [redacted]



[redacted]

[redacted]
LAWSUIT SETTLEMENT
[redacted]

000236

[redacted]

# LAWSUIT SETTLEMENT MEMORANDUM

[redacted] v. CITY OF DETROIT
CASE NO. [redacted]
FILE NO. [redacted]

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**CLAIMANT'S NAME:** [redacted]

**DATE OF INCIDENT:** June 14, 1999

**SUMMARY OF INCIDENT:** In early 1996 the Detroit Housing Commission developed a plan to redesign and modernize the [redacted] using funds then available from HUD. Initially the project was conceived and designed to encompass all 38 buildings and 238 units but to proceed in five phases concurrently. The Plaintiff was the successful bidder on the original contract with a bid of [redacted]

After the preliminary contract work began, due to a changed funding environment and in the philosophy of public housing design, a decision was made to proceed with Phase I of the contract initially but to reserve decision on Phase II through V. Eventually the bulk of Phase I work was completed before a decision not to proceed with Phase II through V was made. The impact of the revision and downsizing of the project was an extended construction time, additional design changes and extra costs. Only after Phase I was substantially complete did the Housing Commission formally exercise its right to terminate the remaining phases.

Once the contract was terminated Plaintiff filed a formal claim under the contract and ultimately a lawsuit for additional costs, lost profits on the total contract originally awarded and associated extra expense for Phase I. That case was tried to conclusion before Wayne County Circuit Judge Warfield Moore in May of 2002 and resulted in a judgment of [redacted] which is pending finalization before Judge Moore on a post judgment motion.

**MEDICAL DIAGNOSIS:** Not Applicable

**MINOR OR WORKPERSON'S COMPENSATION INVOLVED:** No

**MEDIATION:** [redacted]

**DISCIPLINE:** Not Applicable

**LIABILITY EVALUATION:** There is no question that Plaintiff is entitled to additional amounts under the contract. At a minimum, nearly [redacted] is due them per the contract

[redacted]

terms. An appeal of the judgment would call into question two principal elements of damage awarded by the court for extended general conditions and mobilization and demobilization expense, which represent [redacted] and [redacted] of the current judgment respectively. The likelihood of success after appeal would dictate that a favorable compromise settlement now is a better option than taking the risk of an adverse appeal result. Moreover, this settlement will be part of a package compromise of two problematic cases between the Plaintiff and the Housing Commission arising from [redacted]

**AMOUNT OF SETTLEMENT RECOMMENDED:** [redacted]

**EDWARD V. KEELEAN**
**LAWSUIT SETTLEMENT**
[redacted]

[redacted]

000238

[redacted]

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# LAWSUIT SETTLEMENT MEMORANDUM

[redacted] v City of Detroit

| Case Numbers | Property Addresses | File Numbers |
|---|---|---|
| [redacted] | [redacted] | [redacted] |

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**CLAIMANT'S NAME:** [redacted]

**DATES OF INCIDENTS:** Between April 14, 1998 and April 16, 2001

**LOCATIONS OF INCIDENTS:** [redacted]

**SUMMARY OF DISPUTE:** [redacted] is a well known property owner within the City of Detroit who owns in excess of 250 different properties, nine of which were totally or partially demolished between April 1998 and April of 2001. He became the owner of the nine properties involved in this settlement in essentially three different methods, purchases from private owners, land contract purchases from the City of Detroit Planning & Development Department or tax sale acquisitions from the State of Michigan.

In all cases, the building on the property was demolished by the City of Detroit pursuant to the Dangerous Building Ordinance 290-H ([redacted] was partially demolished before being enjoined). With a couple of minor exceptions, the City properly followed and can document adherence to the procedures required by the ordinance.

In all cases, except the case involving [redacted], the City has prevailed on a Motion for Summary Disposition or in one case after a jury trial (7437-43 Joy Rd.), and the decision has been appealed by Sachs. In the case of the jury trial, the ultimate result was an award of [redacted] in attorney fees for the City of Detroit. In one matter a post judgment motion may lead to an award for [redacted] on the City's counter-claim. Finally, the matters that are now on appeal, if upheld by the Courts of Appeals, may yield awards of attorney fees to the City of Detroit

[redacted]

at the end of the appeal process.

However, of the eight cases pending in the State Court of Appeals and the one pending in Federal Court, there are multiple legal issues and diverse facts, which may lead to both favorable and unfavorable legal precedent for the City's long term enforcement of its dangerous building ordinances. Specifically, there is a recurring legal issue involving the adequacy of the City's notice to purchasers of City property where the demolition has already been ordered by the City Council. Additionally, in two of the cases now pending on appeal there are fact issues concerning the method used by the City's Planning Department in forfeiting the Plaintiff's land contract interest in the property, prior to demolition.

In short, even though the City has been uniformly successful in prevailing at the trial court level, there are sufficient fact and legal issues to be resolved by the Courts of Appeal, that it is likely that one or more of the decisions will have a negative long term impact on the City's enforcement of its dangerous building ordinance. Consequently, the City Law Department and the Plaintiff have negotiated a global resolution of the cases at issue as follows: [redacted] will pay [redacted] in cash in two installments within 30 days of the approval of the settlement. He will convey to the City of Detroit Planning and Development Department the property at [redacted] (the property adjoins two lots involved in the trial which concerned the issue of land contract forfeiture). In addition, [redacted] will agree not to contest the special assessment of the demolition liens (in the total amount of [redacted] against all of the six properties (except [redacted]) of which he will retain ownership after the settlements are implemented and sign a release of all claims against the City for the demolitions.

In exchange the City will agree not to undertake collection efforts on the award of attorney fees or on any of the counter-claims for demolition cost which will be awarded pursuant to the existing decisions for Summary Judgment. The City will however still levy the special assessment for demolition costs against the individual lots involved in this process, with the exception of the lot at [redacted] which the City agrees not to specially assess in the amount of [redacted]

MEDIATION: Of the eight cases that were mediated the low amount was [redacted], the high amount was [redacted], and the average was [redacted]

LIABILITY EVALUATION: While the Plaintiff's cases against the City of Detroit are weak, the multiple factual issues involved and the wide ranging legal issues raise the risk of an adverse result that will be detrimental to the long term enforcement of the City Building Ordinance. Additionally the City Law Department has expended over 1500 hours in attorney time in the past three years and significant costs. In contrast, the settlement that is being recommended is sufficiently favorable to the City that it is in the City's best interest to settle the cases as outlined.

[redacted]

SETTLEMENT RECOMMENDED: The City Law Department recommends that they be authorized to approve the necessary releases, satisfactions of judgment, stipulations and order of dismissals to implement the settlement as outlined above, in the ten separate State and Federal cases pending between the City of Detroit and Plaintiff [redacted]

**[redacted] - LAWSUIT SETTLEMENT:**
**CITY TO RECEIVE [redacted] CASH, PROPERTY AT [redacted],**
**AND DEMOLITION LIENS IN THE TOTAL AMOUNT**
**[redacted]**



[redacted]

#90

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# LAWSUIT SETTLEMENT MEMORANDUM

[redacted] AND [redacted] v CITY OF DETROIT AND [redacted]
CASE NO. [redacted]
FILE NO. [redacted] (DB)

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SETTLEMENT PLAINTIFF'S NAME: [redacted]

DATE OF INCIDENT: February 11, 2005 TIME: 1:25 pm

LOCATION OF INCIDENT: Rosa Parks at Clairmont

SUMMARY OF INCIDENT: On February 11, 2005, sixty year old Plaintiff [redacted] was visiting the City of Detroit from Fort Wayne, Indiana when he was involved in an accident with a DPW garbage truck.

Immediately prior to the collision, [redacted] drove his conversion van northbound on Rosa Parks Boulevard toward Clairmont. At the same time, [redacted] drove a City garbage truck westbound. The two vehicles entered the intersection at the same moment and collided. The truck's front bumper struck the right rear quarter panel of Plaintiff's vehicle.

Subsequent investigation revealed that Plaintiff entered the intersection on a green light. At the same time, Taylor entered the intersection facing a dysfunctional traffic signal which displayed neither a red, yellow, or green light. The investigating police officer cited [redacted] for hazardous driving..

MEDICAL DIAGNOSIS: Plaintiff suffered a severe lumbar strain and a deep vein thrombophlebitis (DVT) requiring hospital admission and a morphine drip for pain.

A subsequent MRI revealed the need for surgical excision of left calf necrotic tissue and excision of a gastronnemus hematoma. Following the surgeries, Plaintiff developed fibrosis of the left calf. Fibrosis is the overgrowth of the structural tissue of an organ such that the function of the organ is encroached upon. Plaintiff was restricted to partial weight bearing and he is now able to walk only with the assistance of two canes. His treating physicians have also determined he is permanently disabled from his itinerant preacher activities.

PERSONAL INJURY "SPECIALS":

HOSPITAL: $[redacted]
MEDICAL: $[redacted]
EMPLOYER: [redacted]
RATE OF PAY: $[redacted]
LOST WAGES: $[redacted]



[redacted]

TIME LOST: February 2005 to present
PROPERTY DAMAGE: [redacted]

TOTAL "SPECIALS": [redacted]

MINOR OR WORKPERSON'S COMPENSATION INVOLVED: No

MEDIATION: [redacted]

DISCIPLINE: None

LIABILITY/EVALUATION: Plaintiff predicates the City's liability upon the motor vehicle exception to the City's general tort immunity as provided in MCL 691.1405.

The controlling statute provides that governmental agencies may be liable for bodily injury and property damage resulting from the negligent operation of that agency's vehicles by its officers, agents, or employees. Additionally, the statute requires that any such injury constitute a serious impairment of an important body function or result in permanent disfigurement.

The facts and circumstances found by the responding police traffic accident investigator adequately establish that the City's truck was driven in a negligent manner at the time of the collision. Additionally, the nature and extent of Plaintiff's injuries meets the threshold requirement that he suffered a serious impairment of an important body function.

In addition, Plaintiff's wife asserts a collateral claim for loss of consortium. Her claim is derivative of her husbands claim. She is, therefore, likely to prevail.

Regardless, of the serious and permanent nature of his objectively verified injuries, Plaintiff seeks a [redacted] compromise settlement of his claims in this matter. Such a settlement precludes any possibility of an adverse verdict far in excess of the amount Plaintiff seeks in settlement.

Further, settlement insulates the City from an award of pre- and post-judgment interest, attorneys fees, taxable costs, and mediation sanctions which, with overwhelming probability, will follow an adverse verdict.

AMOUNT OF SETTLEMENT RECOMMENDED: [redacted]

RISK MANAGEMENT MEASURES: Risk management issue are periodically submitted to and discussed with DPW.



[redacted]

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# LAWSUIT SETTLEMENT MEMORANDUM

[redacted], [redacted], AND [redacted] v THE CITY OF DETROIT AND [redacted]
CASE NO.: [redacted] AND [redacted]
FILE NO. [redacted] (PLC)

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**CLAIMANT'S NAME:** [redacted]

**DATE OF INCIDENT:** June 1999 through February 2000 **TIME:** Early morning

**LOCATION OF INCIDENT:** West Seven Mile Road Corridor

**SUMMARY OF INCIDENT:** This matter arises from the actions of former Detroit Police Sergeant [redacted] who conducted improper traffic stops the purpose of which was to extort sexual favors from female drivers. At the time of the asserted misconduct, [redacted] was on duty, in uniform and drove a Detroit police vehicle.

[redacted] During June of 1999, [redacted] engaged in ordinary patrol activities in the vicinity of Seven Mile Road on the City of Detroit's west side. As he did so, [redacted] who was eastbound, passed Plaintiff [redacted], who was westbound. [redacted] executed a U-turn, approached [redacted] from behind, and signaled her to pull to the curb. After a brief conversation, during which her boyfriend appeared, [redacted] continued on her way. [redacted] followed.

As she turned from Seven Mile Road, [redacted] again signaled her to pull to the curb, and she again complied. He exited his vehicle, approached [redacted] driver's side window and suggested that offering her phone number might be a means to avoid receiving a speeding ticket.

[redacted] then directed [redacted] to step out of her vehicle. When [redacted] did as directed, [redacted] retrieved a camera from his vehicle and announced that he wanted to take her photograph. [redacted] allowed him to do so to avoid being ticketed.

Within a few moments, [redacted] began touching [redacted] breasts. [redacted] then took her hand and placed it on his penis. As she turned away from him, [redacted] grasped her breasts roughly and began rubbing his penis against her from behind. To distract him, [redacted] then told [redacted] that she would like to watch as he masturbated. As he began doing so, [redacted] entered her automobile and drove away.

[redacted] did not report the incident until after [redacted] arrest was featured on local broadcast news reports nearly nine months later.

[redacted] At approximately 6:30 a.m., on September 7, 1999, [redacted] was

[redacted]

on-duty and driving a marked Detroit Police Department patrol vehicle when he observed [redacted] driving westbound along Seven Mile Road in the City of Detroit. When she accelerated through a yellow traffic signal, he initiated a traffic stop and Diamond pulled to the curb.

[redacted] requested [redacted] operator's license, registration, and proof of insurance, none of which she was able to produce. Using his vehicle's mobile computer link, [redacted] discovered that [redacted] was also the subject of two arrest warrants.

[redacted] then proposed an arrangement in lieu of arrest. Without hesitation, [redacted] asked [redacted] to expose her breasts so her could take photographs. She did so and also lowered her slacks to expose her buttocks for additional photographs. [redacted] then exposed his penis and ordered [redacted] to fondle and place it in her mouth. She did as instructed, but after a few moments, [redacted] returned to her automobile and drove away.

Like [redacted], [redacted] did not report the incident until after [redacted] arrest was featured on local broadcast news reports during February of the following year.

[redacted] At approximately 3:30 a.m., on February 6, 2000, [redacted] drove eastbound on Seven Mile Road in the vicinity of Outer Drive and Schaefer when she noticed [redacted] driving a marked police vehicle traveling in the opposite direction. [redacted] executed a U-turn, pulled up behind Moody, and signaled her to stop.

After discovering that she had no valid operator's license and that she was the subject of an outstanding warrant, [redacted] proposed taking [redacted] photograph in lieu of arrest; she agreed. [redacted] asked her to open her jacket and expose her breasts and he took several photographs. [redacted] then asked [redacted] to stroke his penis; before he could unzip his fly, [redacted] began rubbing Witherspoon through the fabric of his pants. She continued for approximately two minutes.

[redacted] then drove away and returned to her home; [redacted] followed but, when her mother appeared at the door to let her in the house, he drove away. Accompanied by her mother, [redacted] then drove to the nearby 12th Precinct where [redacted] made her report.

A 12th Precinct desk sergeant took [redacted] report of the incident without any attempt to discourage or dissuade her. The desk sergeant also immediately contacted Internal Affairs and two investigators responded to the Precinct to interview [redacted]. The investigators allowed [redacted] to make a full and complete report without any effort to cut her off or conceal details; they also immediately took fingerprints from her vehicle.

The following day, [redacted] was informed that he was under investigation, taken off patrol duty and placed on desk duty. He learned of the investigation when he reported for work and

found that Internal Affairs investigators had obtained and executed a search warrant, and seized evidence from his precinct locker.

One day following Internal Affair's seizure of evidence from his locker, [redacted] superiors escorted him to the Internal Affairs office where he was suspended, notified that a warrant had been issued for his arrest, and he was taken into custody.

When [redacted] arrest was broadcast by the local media, [redacted] came forward and reported her involvement with [redacted] nine months earlier, and [redacted] came forward and reported her contact with him approximately five months earlier.

**MEDICAL DIAGNOSIS:** Plaintiff's do not claim any physical injuries. They instead assert psycho-emotional distress related injuries only.

**MINOR OR WORKPERSON'S COMPENSATION INVOLVED:** No

**MEDIATION:** [redacted] - Plaintiffs and Defendants rejected.

**DISCIPLINE:** Following his arrest [redacted] was charged with three counts of criminal sexual conduct and three counts of extortion. He was convicted and is currently serving a prison sentence. His conviction embraced charges involving not only [redacted], but also [redacted] and [redacted]

**LIABILITY/EVALUATION:** Plaintiffs allege deprivations of their constitutionally protected rights arising under both the Constitution of the United States and Michigan's Elliot-Larsen Civil Rights Act (ELCRA), MCL 37.2103(i). They name both the City of Detroit and [redacted] as party defendants.

At the time of the underlying incidents, [redacted] was not acting in the fair performance of his duties as a City law enforcement official. Accordingly, he is neither represented nor indemnified by the City in this matter. Plaintiff's claims against him are, therefore, neither discussed nor considered below.

Plaintiffs' state law Elliot-Larson claims were before the Third Circuit Court where Plaintiffs presented a 'quid pro quo' sexual harassment claim under the provisions of ELCRA. The City contended that such claims failed to state a proper cause of action since Plaintiff's were not denied any public service on the basis of their gender, and because the "quid pro quo" provisions of the ELCRA apply only in employment-related situations where both the perpetrator and victim are co-employees of a common employer.

Judge Gershwin Drain of the Wayne County Circuit Court disagreed and rejected the City's request to dismiss the matter on such grounds. The Court of Appeals then denied the City's interlocutory application for leave to appeal. The matter then proceeded to trial.

At the conclusion of a two week contested trial, Plaintiff's prevailed and the jury returned a [redacted] verdict in their favor. The verdict was divided between [redacted] and the City with 35% percent, or [redacted] being allocated to the City.

The City pursued an appeal of the trial's outcome. On April 12, 2005, the Michigan Court of Appeals, however, affirmed the verdict and, in a published opinion, held that the ELCRA applies to situations outside of an employment setting and that the facts of this matter created a jury-submissible cause of action under the Act's "quid pro quo" provisions.

On July 13, 2005, the City filed an application for leave to appeal to the Michigan Supreme Court. The Court may grant leave to appeal, deny leave, grant oral argument on the application, or take other peremptory action. A decision in this regard will not be forthcoming for several months.

Plaintiffs' federal constitutional claims against the City are currently pending before the United States District Court for the Eastern District of Michigan. The federal component of this matter is stayed pending the outcome of the City's appeal in the state court system.

If the City is unsuccessful in the Michigan Supreme Court, the federal action will be dismissed. The City, however, will then be obligated to pay the Third Circuit Court verdict, which with the accrual of post-judgment interest, is currently in excess of [redacted]

If, on the other hand, the City succeeds in the Michigan Supreme Court and the Third Circuit Court verdict is overturned, the federal component will immediately proceed to trial on Plaintiff's 14th Amendment due process claims.

Plaintiff's 14th Amendment claims are well recognized and clearly defined by federal authorities. To prevail against the City, it is not enough that Plaintiff's prove that [redacted] committed the acts of which he is accused and for which he has been convicted. Rather, Plaintiff must prove that [redacted] acted in the furtherance of a City policy of some manner.

Toward this end, Plaintiffs assert that the City knew of [redacted] sexual predation and did nothing to end or otherwise prevent such conduct. They further contend that the City was thereby deliberately indifferent to the harm he caused others.

[redacted] Police Department disciplinary history lends credence to Plaintiff's claims. Specifically, he was the subject of a prior formal sexual harassment investigation which found he

was guilty of provocative misconduct several years prior to his contact with Plaintiffs. [redacted] was also accused of sexual misconduct on two additional occasions, neither of which was investigated.

Lastly, [redacted] provided sworn deposition testimony in which he openly and unequivocally admitted that he had engaged in sexual activity during the course of pretext traffic stops for several years prior to the date of his arrest.

To avoid liability of any manner, the City must first prevail on its appeal before the Michigan Supreme Court, and then prevail again in a trial before the United States District Court. The facts and circumstances of this matter, however, provide Plaintiffs a meaningful advantage in both arenas.

Plaintiff's nonetheless seek a [redacted] compromise settlement of their claims in both the state and federal component of this matter. Such a settlement is less than half of the judgment now confronting the City in state court action. Such a settlement also precludes any possibility of an adverse verdict far in excess of the amount Plaintiffs seek in the event the federal action proceeds to trial. Resolution of this matter also insulates the City from an award of attorneys fees and the imposition of punitive damages which may be awarded because of the federal constitutional basis underlying Plaintiffs' claims.

**AMOUNT OF SETTLEMENT RECOMMENDED:** [redacted]

**RISK MANAGEMENT MEASURES**: Police litigation matters are regularly reviewed by Police Department Risk Management representatives and Law Department attorneys, for, among other things, risk management implications.

[redacted]
LAWSUIT SETTLEMENT
[redacted]



[redacted]

# RESOLUTION

BY COUNCIL MEMBER_____:

**RESOLVED**, that settlement of the above matter be and is hereby authorized in the amount of [redacted] **and NO CENTS** [redacted], and be it further

**RESOLVED**, that the Finance Director be and is hereby authorized and directed to draw a warrant upon the proper account in favor of **AMOS E. WILLIAMS, P.C., AND ROBINSON AND ASSOCIATES, P.C., attorneys, and** [redacted] **AND** [redacted], in the amount of [redacted] **DOLLARS and NO CENTS** [redacted] in full payment for any and all claims which [redacted] may have against the City of Detroit by reason of Plaintiffs' contact with former Detroit Police Sergeant [redacted] on or between June of 1999 and February 2000, and that said amount be paid upon receipt of properly executed Releases and Stipulation and Order of Dismissal entered in Third Circuit Case No. [redacted] and United States District Court Case No. [redacted] approved by the Law Department.

**APPROVED:**

RUTH C. CARTER
Corporation Counsel

BY: _____
Ruth C. Carter
Corporation Counsel

000249

[redacted]

# RELEASE AND AGREEMENT

File No: ***File Number***

Case No ***Case Number***

Dept. No: [redacted]

Acc Code: [redacted]

For, and in consideration of the sum of [redacted] **DOLLARS and NO CENTS** [redacted], the receipt of which is hereby acknowledged, the undersigned [redacted], hereby releases the City of Detroit and any and all of the latter's servants, agents and employees from any and all liability, actions or claims, the undersigned may, or shall have against them, by reason of any loss or damage, whether presently known or unknown, prospectiye or progressive that may, shall, or can arise, or which have arisen, directly or indirectly, including aggravation of any pre-existing physical or mental condition from an incident that occurred on or about ***Date of Incident***, at or near **West Seven Mile Road Corridor**, in which [redacted] sustained alleged WHEN Plaintiffs had contact with former Detroit Police Sergeant [redacted].

I understand that the payment set forth herein represents the compromise of a disputed claim and such payment is not to be construed as an admission of liability on the part of the City of Detroit, its employees, agents or contractors who all expressly deny any liability.

**THIS RELEASE AND AGREEMENT** constitutes the entire understanding between the parties hereto and any other agreement made by them, or any of them, at any time prior hereto with respect to the foregoing shall not be of any force or effect and the provisions hereof are and shall be binding upon and shall inure to the benefits of the respective heirs, executors, administrators, successors of the within mentioned parties forever.

000250

[redacted]

IN WITNESS WHEREOF, the undersigned have hereunto affixed the signatures appearing below at _____, Michigan, on _____, 2005.

**Witnessed By:**

_____

_____

_____

**Employer ID Number**

_____ **and** _____

_____
Address

_____
Social Security Number

_____
Signature

_____
Social Security Number

_____
Address

STATE OF MICHIGAN _____)
)SS
COUNTY OF _____)

On _____, 2005, before me personally appeared the above-named parties, to me personally known to be the same person(s) described in and who affixed the signature(s) upon the foregoing instrument in my presence and who stated on oath that each has read or has heard read the contents thereof which has been understood by each and that such contents are true and that same has been executed as the free and voluntary act of the signer(s) thereof.

_____

NOTARY PUBLIC, _____ COUNTY, MI

My Commission Expires: _____

000251

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

***Plaintiff Names***,

Case No. ***Case Number***

Plaintiff,

v

***Defendant Name***

Defendant.
_____/

**STIPULATION TO DISMISS CAUSE**

The parties in the above-entitled cause by their respective attorneys, hereby stipulate and agree that an Order be entered forthwith dismissing the said cause with prejudice and without costs and attorney fees to any party.

AMOS E. WILLIAMS (P-39118)
Amos E. Williams, P.C. and Robinson and Associates, P.C.
Attorney for Plaintiff
615 Griswold, Suite 1115
Detroit, Michigan 48226
(313) 963-5222

PAULA L. COLE (P-31888)
City of Detroit Law Department
Attorney for Defendant
660 Woodward Avenue
1650 First National Building
Detroit, MI 48226
(313) 237-3017

**ORDER TO DISMISS CAUSE**

At a session of the said Court held in the Courthouse, City of Detroit, County of Wayne, Michigan on_____

Present: Honorable _____
Circuit Court Judge

Upon the reading and filing of the stipulation annexed hereto, and the Court being fully advised in the premises;

**IT IS HEREBY ORDERED** that the within cause be dismissed with prejudice and without costs and without attorney fees to any party; all pending claims are hereby resolved and this case is now closed.

_____
Circuit Court Judge

000252

PAULA L. COLE
LITIGATION DIVISION
DIRECT DIAL 313-237-3017
E-MAIL:COLEP@LAW.CI.DETROIT.MI.US

November 30, 2005

AMOS E. WILLIAMS
Amos E. Williams, P.C. and Robinson and Associates, P.C.
615 Griswold, Suite 1115
Detroit, Michigan 48226

RE: ***Plaintiff Names*** v ***Defendant Name***
CASE NO.: ***Case Number***

Dear Mr. Williams:

Enclosed you will find an original and two copies of the Release and Agreement and the proposed Stipulation and Order to Dismiss Cause in connection with the above-referenced matter.

1. Please have your client sign all copies of the Release And Agreement and provide us with his Social Security Numbers and current address.
2. The form requires witness signature(s) and complete notarization.
3. Please include your SSN or Employer ID number – without it we will be unable to process the payment.
4. Please do not alter the Release And Agreement. If you wish to make changes, please contact the undersigned. A revised Agreement will be prepared by this office and forwarded to you.
5. Please sign the Stipulation To Dismiss Cause. This office will submit the documents to the Court and a true copy will be forwarded to you as soon as it is received.

**Omission of any of the above required information will delay processing the settlement check. Faxed copies are not acceptable; original signatures are needed on all documents.** Should you have any questions or concerns regarding the releases please contact **Paula L. Cole**.

After all documents are executed and returned, a settlement check will be mailed to you as soon as practicable. When returning the documents, please mail them to the above address, **ATTN: ZECHARIAH L. GROSS,** Office Assistant.

Very truly yours,

PAULA L. COLE
Chief Assistant Corporation Counsel

PLC
Enclosures

000253

Plaintiff's Name: [redacted], [redacted]
[redacted], and [redacted]
FILE NO.: ***File Number*** (PLC)
DEPT. CODE: [redacted]
Accident Code: [redacted]

# SETTLEMENT ROUTING SLIP

PLEASE PLACE YOUR INITIALS IN THE SPACE PROVIDED AFTER YOU HAVE REVIEWED THE DOCUMENT AND FORWARD TO THE NEXT PERSON INDICATED.

| | *INITIALS* | *DATE* |
|---|---|---|
| TYPIST | JAS | 11/16/05 |
| ATTORNEY (PLC) | | 11/16/05 |
| CHIEF | | |
| SUBMITTED TO PITNEY BOWES | | |
| COPY TO COUNCIL | | |

000254

[redacted]

November 16, 2005

**HONORABLE CITY COUNCIL**

RE: [redacted], [redacted], AND [redacted] v
**THE CITY OF DETROIT AND** [redacted]
**CASE NO.:** [redacted] **AND** [redacted]
**FILE NO.** [redacted] **(PLC)**

We have reviewed the above-captioned lawsuit, the facts and particulars of which are set forth in a confidential memorandum that is being separately hand-delivered to each member of Your Honorable Body. From this review, it is our considered opinion that a settlement in the amount of [redacted] **and NO CENTS** [redacted] is in the best interest of the City of Detroit, and be it further

We, therefore, request authorization to settle this matter in the amount of [redacted] **and NO CENTS** [redacted] and that Your Honorable Body direct the Finance Director to issue a draft in that amount payable to **AMOS E. WILLIAMS, P.C., AND ROBINSON AND ASSOCIATES, P.C., attorneys, and** [redacted], [redacted], **AND** [redacted] to be delivered upon receipt of properly executed Releases and Stipulation and Order of Dismissal entered in Third Circuit Court Case No. [redacted] and United States District Court Case No. [redacted] approved by the Law Department.

Respectfully submitted,

Allan M. Charlton
Chief Assistant Corporation Counsel

**APPROVED:**

RUTH C. CARTER
Corporation Counsel

000255

BY: _____
Ruth C. Carter
Supervising Assistant Corporation Counsel

JAS:bhs

[redacted]

# MEMORANDUM

PRIVILEGED AND CONFIDENTIAL

To: Honorable City Council

From: Brenda E. Braceful, Deputy Corporation Counsel
Law Department

Re: [redacted], et al v City of Detroit

Date: [redacted] 10/26/05

I am writing this Memorandum to apprise your Honorable Body of these two consolidated appeals in which the City's Application for Leave to Appeal is currently pending in the Michigan Supreme Court, and to request a closed session to discuss the possibility of settlement. There is a Judgment against the City which at this time totals over [redacted] with accrued interest and attorney fees.

On April 12, 2005, the Michigan Court of Appeals affirmed a judgment of [redacted] against the City of Detroit in the two consolidated cases involving three female plaintiffs. An on-duty Detroit Police patrol sergeant, [redacted] on separate occasions pulled over each plaintiff in the early morning hours, and photographed and sexually assaulted them. One of the women, [redacted] reported her incident to the Police Department shortly thereafter. The resultant media coverage apparently prompted [redacted] and [redacted] whom [redacted] had also assaulted, to come forward as well.

Plaintiffs filed suit in state court alleging "quid pro quo" sexual harassment pursuant to the Elliott-Larsen Civil Rights Act, MCL 37.2103(i). Defendant City contended that the Elliott-Larsen Act is inapplicable because Plaintiffs were not denied any public service on the basis of their gender, and because the "quid pro quo" provisions of the Act apply only in employment-related situations. Plaintiffs' federal claims under 42 USC 1983 were stayed by U.S. District Judge Nancy Edmunds pending the state appeal. [redacted] was also named as a defendant in the action, but the City is neither representing nor indemnifying him. [redacted] is presently incarcerated for criminal sexual conduct and extortion.

Judge Gershwin Drain of the Wayne County Circuit Court denied the City's Motion for Summary Disposition, and the Court of Appeals denied its interlocutory Application for Leave to Appeal. The cases then went to trial and the jury returned a total verdict of [redacted] Plaintiffs' favor, with 65% of the fault allocated to [redacted] and 35% to the City. At trial the City objected to Plaintiffs' proposed jury instructions regarding the Elliott-Larsen Act as being inapplicable. The trial court denied the City's post-trial motions.

[redacted]

The City then appealed of right. Plaintiffs filed a cross appeal on the allocation of fault issue but dismissed it after briefs were filed. The Court of Appeals affirmed the judgment against the City in a published opinion, holding that the Elliott-Larsen Act applies outside of the employment setting and that the facts created a jury-submissible cause of action for "quid pro quo" sexual harassment.

On July 13, 2005, the City filed an Application for Leave to Appeal in the Michigan Supreme Court. The Court may grant leave to appeal, deny leave, grant oral argument on the application, or take other peremptory action. We expect a decision in the next several months. We have sought assistance in the form of *amicus curiae* briefs from both the Michigan Attorney General's office and Wayne County, and it is our understanding that they are working on these briefs.

This is a large verdict in a case involving a very significant issue. At this time the total judgment, with interest, is [redacted]. We remain consistent in our legal position that the Elliott-Larsen Act does not apply to this factual situation, egregious as it obviously is. Due to the uncertainty of a Supreme Court Application, however, we have explored the possibility of settlement with Plaintiffs' counsel and his demand is [redacted]. To ensure that your Honorable Body is fully informed, we respectfully request the opportunity to discuss these cases in a closed session prior to any further negotiations or submission of any proposed settlement to you.

If you have any questions, please feel free to contact me.

BEB:slw



[redacted]

# LAWSUIT SETTLEMENT MEMORANDUM

[redacted] v City of Detroit
WAYNE COUNTY CIRCUIT COURT CASE NO. [redacted]
MICHIGAN COURT OF APPEALS NO. [redacted]
FILE NO. [redacted]

---

**CLAIMANT'S NAME:** [redacted]

**DATE OF INCIDENT:** February 25, 2003 **TIME:** 5:45 or 5:50 a.m.

**LOCATION OF INCIDENT:** First Street between Abbott and Michigan

**SUMMARY OF INCIDENT:** This action involves an incident which allegedly occurred on February 25, 2003, at approximately 5:45 or 5:50 a.m. A circuit court jury trial resulted in a total judgment against the City of $[redacted] including costs, attorney fees and interest. The City has filed a Claim of Appeal in the Michigan Court of Appeals, where both parties have filed their briefs and a settlement conference has been held.

Plaintiff, [redacted] testified that she was going to work at the McNamara Federal Building in downtown Detroit. She worked as a [redacted] for the Internal Revenue Service. Her normal working hours were 7:00 a.m. to 3:30 p.m., but on this date she was going in early to work a "credit hour" so that she would be able to take an hour off at some point when she needed to.

Plaintiff parked her vehicle in a nearby parking lot owned by the City of Detroit, and walked to the sidewalk located along First Street north of Abbott between Abbott and Michigan. She testified that there was snow on the ground that morning. She alleges that she stepped on the rectangular cover of a "cable box" on the sidewalk, and the cover gave way underneath her causing her to fall into the hole.

[redacted], Construction Inspector for the City of Detroit, testified that the cover and underground structures were known as a "cable box." [redacted] also testified that the cover was made of plastic, and was located on the sidewalk.

There were no eyewitnesses to Plaintiff's fall. Plaintiff testified that she got herself out of the hole and reported the incident to [redacted], a parking lot attendant. [redacted] testified that he is not an employee of the City of Detroit (he was employed by the management company).

**MEDICAL DIAGNOSIS:** Following her fall Plaintiff went to the emergency room of Providence Hospital. X-rays of the left ankle, left hip and left shoulder were generally unremarkable, although there was a possible fracture of the shoulder on radiograph appearance. Clinically, however, there were no indications of a fracture. The diagnosis was contusion of left hip and

shoulder. Plaintiff was given a note to be off of work for two days, and instructed to follow up with her own doctor.

Plaintiff subsequently treated with her internist, Dr. [redacted], and an orthopedic surgeon, Dr. [redacted]. Both testified at trial via video deposition.

Plaintiff first saw Dr. [redacted] after the incident on March 3, 2003. According to Dr. [redacted], on that date she gave a history "[t]hat she had fallen, that there was a slip and fall accident on cement ... ." His initial diagnosis was contusions or trauma to the back, hip and shoulder with limitation of movement of the left shoulder because of pain. Dr. [redacted] also testified that he later came to find out that there was a shoulder fracture, and that Plaintiff had developed or had a lumbar radiculopathy. An EMG of the upper extremity was normal.

Dr. [redacted] last saw Plaintiff prior to trial on August 9, 2005. He testified that he did not feel Plaintiff's prognosis was good because of her continuing pain. He had referred Plaintiff to Dr. [redacted]

On [redacted] first visit to Dr. [redacted] on May 23, 2003, she gave a history of having fallen on a sidewalk on February 25, 2003 and injuring her left arm, neck and left hip area. She had been seen at Providence Hospital where X-rays showed a question of a possible fracture of the inferior glenoid, which is the socket of the shoulder joint. There were no significant findings in the hip, wrist or ankle. She had undergone physical therapy, which did help. However, she had residual complaints of pain in the left arm and left side of the neck, occasional numbness in the left middle and ring fingers, occasional arm swelling, and pain in the left anterior thigh, groin area and left buttock. Dr. [redacted] also testified that the fracture was minimally displaced and showed some healing on X-rays taken in his office during that initial visit.

As of the first visit, Dr. [redacted] impression was cervical disc disease with radiculitis at C5 and possibly C7, shoulder pain secondary to the inferior glenoid fracture which was healing, and degenerative disc disease of the lumbar spine with a probable L4 radicular component. He prescribed Vioxx which was later changed to Relafen because [redacted] insurance would no longer pay for Vioxx. Dr. [redacted] last saw Plaintiff on August 23, 2004.

**PERSONAL INJURY "SPECIALS":**

| | |
|---|---|
| MEDICAL: | [redacted]ket |
| EMPLOYER: | Internal Revenue Service |
| RATE OF PAY: | [redacted] |
| LOST WAGES: | approximately [redacted] to time of trial |
| TIME LOST: | Took early disability retirement; receives $[redacted] |

TOTAL "SPECIALS": approximately [redacted] time of trial

MINOR OR WORKPERSON'S COMPENSATION INVOLVED: No.

MEDIATION: [redacted]

DISCIPLINE: None.

LIABILITY/EVALUATION: Liability in this case is premised upon the "highway defect" exception to governmental immunity, MCL 691.1402(1). Plaintiff filed the instant lawsuit on October 17, 2003. She named as defendants the City of Detroit, Comcast of Detroit, Inc., and Ameritech Corporation, Inc. The Complaint alleged negligence (Count I) and nuisance (Count II) against all defendants.

With respect to the City of Detroit, Plaintiff alleged that the incident occurred on a City sidewalk. She stated that she "... stepped on a snow covered metal plate which collapsed causing Plaintiff to fall into the hole beneath the cover." Plaintiff relied on the "highway defect" exception to governmental immunity, MCL 691.1402 et seq.

The Complaint also alleged that all three defendants "... were the owners, possessors and/or otherwise in control of and/or charged with the care and maintenance of said premises." It also stated that all three defendants "... had their agents and/or employees working at the site around and inside the hole that should have been safe to walk upon or blockaded."

In order to establish her claim under the "highway exception," Plaintiff was required to establish pre-incident notice under MCL 691.1403. This statute provides that "[n]o governmental agency is liable for injuries or damages caused by defective highways unless the governmental agency knew, or in the exercise of reasonable diligence should have known, of the existence of the defect and had a reasonable time to repair the defect before the injury took place." Notice may be shown by: (1) actual notice; (2) the existence of the defect for over 30 days or (3) evidence showing that the agency should have discovered and repaired the defect in the exercise of reasonable diligence. Peterson v Transportation Department, 154 Mich App 790; 399 NW2d 414 (1986). At trial in this case, Plaintiff relied primarily on the second form of notice.

On September 23, 2004, Defendant City filed a Motion for Summary Disposition, arguing, first, that Plaintiff had indicated in a diagram that she fell not on the sidewalk but in the parking lot; and second, that the hole in question belonged to Comcast and not the City. To its motion Defendant attached an Affidavit of [redacted] the parking lot attendant, in which he indicated that the cover had "the markings CATV on it," which Defendant took to be Comcast Cable.



[redacted]

The trial court denied summary disposition to the City at a hearing on November 12, 2004, holding that the affidavit did not establish Comcast's ownership of the cover and hole or its control over the sidewalk or area at the time of the incident. A praecipe Order denying summary disposition was entered on that date.

Ameritech was dismissed via stipulation on January 27, 2005. Comcast settled with Plaintiff and was dismissed on February 2, 2005.

Trial began on October 31, 2005. When asked to describe her fall, on direct examination Plaintiff testified that "... it felt like something went out from under me and I just went down." On cross-examination she testified that "[a]s far as I knew" she stepped on the cover and it gave way. Further, Plaintiff had stepped on the cable box many times before without difficulty. In fact, she was not aware of any problem with the cable box cover (or any other problem in the area) as late as the afternoon before her fall when she left work.

Plaintiff was 55 years of age on the date of her fall, her birthdate being February 15, 1948. She planned on retiring within five years from the incident, but instead took an early disability retirement.

Additionally, Plaintiff testified that her annual salary at the time of her alleged fall was [redacted] She was receiving a disability retirement pension of [redacted] per month. Her out-of-pocket expenses totaled "... at least close to [redacted] ... ," according to her own testimony.

Plaintiff called a former co-worker at the IRS, [redacted], and her former supervisor there, [redacted] Neither witnessed [redacted] fall. [redacted] testified that construction work had been ongoing in the area for a minimum of 30 days prior to Plaintiff's alleged fall, and that a fence had been removed from the area for at least that long. [redacted] also testified that construction had been ongoing in the area, what she described as "... a lot of digging in the ground" on the sidewalk and street, for a minimum of 30 days before the incident. She also described "... a couple of spots on the sidewalk near the edge that were open ... ," but they were at the edge of the sidewalk. At no time did [redacted] indicate that she observed a defective or out-of-place cover.

[redacted], the parking lot cashier, testified next. [redacted] testified that Plaintiff came to him to report that she had fallen into the hole.

[redacted] then went to the area and saw the cover "tilted" into the hole, as well as footprints in the snow inside the hole. [redacted] never saw Plaintiff in the hole, but on questioning by the trial court he testified clearly that the cable box cover had collapsed.

[redacted] testified that the other parking lot attendant informed him that he had called the City of Detroit to inform the City about the hole, because [redacted] did not have the telephone

number. [redacted] also stated that at about 11:00 a.m. or noon on the day of Plaintiff's fall, a City of Detroit crew responded to the scene and barricaded the hole.

[redacted] further testified that another woman had fallen into the hole the day before Plaintiff fell. He went on to testify, on direct examination, that he did not know how long the hole had been there. He was not aware of the hole being open until the other woman fell the day before Plaintiff. He did testify that work had been ongoing on the sidewalk for at least 30 days before the date in question.

[redacted] also testified that the hole belonged to SBC, and told this to the City's legal investigator, Lou Hatty. However, in an Affidavit he stated that the cover had the markings "CATV" on it. Mr. Hatty also testified that the cover was marked "CATV."

There was no evidence that the City of Detroit was performing any of the work these witnesses described. [redacted], former Supervisor of Maps and Records for the City Engineering Division of the Department of Public Works, testified that the federal government was performing work in the area to secure its properties following the attacks of September 11, 2001, but the City knew nothing of the details (what work, who would be doing it, when, etc.).

Plaintiff's expert witness was [redacted], a safety and human factors consultant. [redacted] testimony was that both the concrete surface and the cable box cover were deteriorated, and had been in that condition for between one and four months. [redacted] also testified that the weather report reflected seven inches of snow on the day of Plaintiff's accident, and he also believed that it indicated snow the day before as well.

After the close of proofs, Defendant City moved for a directed verdict. It argued that the City had no duty to place a barrier or warning device around the area since there is no independent duty to keep a highway reasonably safe, citing Weakley v Dearborn Heights (on rem), 246 Mich App 322; 632 NW2d 177 (2001). It also sought a directed verdict on the basis of MCL 691.1403, arguing that Plaintiff had failed to show the existence of any claimed defect for 30 days or longer. The circuit court denied this, holding that the testimony created an issue of fact for the jury.

On November 7, 2005, the jury reached its verdict. It found in favor of Plaintiff and awarded $[redacted] for economic damages to the date of the verdict, and [redacted] for pain and suffering to that date. It also awarded [redacted] for future medical expenses, [redacted] for future lost earnings, and [redacted] for future pain and suffering. It further found no comparative negligence on Plaintiff's part, and the City to be 100 per cent at fault.

On December 7, 2005, the circuit court entered an Order of Judgment on the jury's verdict in the amount of [redacted] plus costs in the amount of $[redacted], attorney fees in the amount of $[redacted], and interest in the amount of [redacted]. At a hearing on December 2, 2005, the

court had set the attorney fee amounts at $300.00 per hour for Mr. Cary Makrouer and $200.00 per hour for Ms. Keitha Cowen. The total amount of the judgment was [redacted].

On December 27, 2005, Defendant City filed its Motion for Judgment Notwithstanding the Verdict or, in the Alternative, Motion for New Trial and Stay of Proceedings to Enforce Judgment. In its motion it argued that Plaintiff had not established pre-incident notice of the alleged defect pursuant to MCL 691.1403. It also argued that the amount of the verdict was excessive, based on passion and/or prejudice, and against the great weight of the evidence. On January 30, 2006, the City filed an Amended Motion for Judgment Notwithstanding the Verdict or, in the Alternative, Motion for New Trial and Stay of Proceedings to Enforce Judgment or, in the Alternative Motion for Remittitur, to clarify that it was seeking remittitur of the verdict in the event the court denied a new trial.

On February 10, 2006, the trial court held a hearing on Defendant City's post-trial motions. It denied judgment notwithstanding the verdict, a new trial and remittitur, again finding that Plaintiff's witnesses had created a fact issue as to the existence of the claimed defect for 30 days or longer. It expressly considered and denied the City's request for remittitur, which had been raised in the amended motion, stating that damages were within the province of the jury. An Order denying post-trial relief was entered on February 10, 2006.

Defendant City filed its Claim of Appeal on March 2, 2006. The primary issue on appeal is pre-incident notice pursuant to MCL 691.1403. In its Brief Defendant City argued that, despite the protracted testimony about "work" in the area for in excess of 30 days, Plaintiff had failed to establish a defect in the cable box cover that had existed for that period of time. In her Brief on Appeal Plaintiff relied chiefly on the third (constructive) form of notice above - that "... the City should have discovered and repaired the defect in the exercise of reasonable diligence" before her alleged fall. In a Reply Brief Defendant again pointed out that there was nothing in the evidence to indicate that the City should have been aware of any problems with the cover.

Following briefing, the Court of Appeals held a settlement conference, which it frequently does in cases with outstanding judgments to determine whether the parties can reach an amicable resolution. The conference was held on November 3, 2006. On that date the Court of Appeals' Settlement Director, Mr. [redacted], informed counsel that the current affirmance rate is 83%. Thus, appellants, such as the City in this case, face an uphill battle regardless of the strength of their positions.

After lengthy discussions at the conference, it became clear that Plaintiff understood that the City has a strong position on appeal, particularly on the notice issue. However, the City faces a heavy burden as appellant, particularly on such a fact-specific issue as notice. There is also a strong argument as to remittitur (especially with respect to the present economic damages), but this would involve a remand to the circuit court to determine the proper amount, and it is highly unlikely that remittitur would result in a figure less than the recommended settlement amount.

Ultimately, the parties agreed to a settlement figure of [redacted]. This is well under 50% of the value of the judgment, on which a year's additional statutory interest has already accrued and on which interest would continue to accrue for the remainder of the appellate process (an additional 12-18 months). In light of the risks involved, and the 83% rate of affirmance at the Court of Appeals, a settlement of [redacted] is recommended at this time.

AMOUNT OF SETTLEMENT RECOMMENDED: [redacted]

RISK MANAGEMENT MEASURES: A City crew placed a barricade after Plaintiff's fall. Further, according to [redacted] testimony the cover has been replaced.

**SHERI L. WHYTE**
**LAWSUIT SETTLEMENT**
[redacted]

000264

[redacted]

# RESOLUTION

**BY COUNCIL MEMBER** _____:

**RESOLVED**, that settlement of the above matter be and is hereby authorized in the amount of [redacted]; and be it further

**RESOLVED**, that the Finance Director be and is hereby authorized and directed to draw a warrant upon the proper account in favor of [redacted] **and her attorneys, THE THURSWELL LAW FIRM, P.L.L.C.,** in the amount of [redacted] in full payment for any and all claims which [redacted] **and The Thurswell Law Firm, P.L.L.C.** may have against the City of Detroit by reason of alleged injuries sustained on or about **February 25, 2003**, and by reason of the Judgment and interest, cost and attorney fee awards entered on December 7, 2005, and that said amount be paid upon receipt of properly executed Releases and Stipulations and Orders of Dismissal entered in Wayne County Circuit Court No. [redacted] and Michigan Court of Appeals No. [redacted], approved by the Law Department.

**APPROVED:**

JOHN E. JOHNSON, JR.
Corporation Counsel

000265

BY: _____
Brenda E. Braceful
Deputy Corporation Counsel

[redacted]

# RELEASE AND AGREEMENT

File No. A19000-002778
Case No. [redacted]
Court of Appeals No. [redacted]
Dept. No: [redacted]
Acc Code: [redacted]

For, and in consideration of the sum of [redacted] No Cents [redacted], the receipt of which is hereby acknowledged, the undersigned [redacted] **The Thurswell Law Firm, P.L.L.C.**, hereby release the City of Detroit and any and all of the latter's servants, agents and employees from any and all liability, actions or claims, the undersigned may, or shall have against them, by reason of any loss or damage, whether presently known or unknown, prospective or progressive that may, shall, or can arise, or which have arisen, directly or indirectly, including aggravation of any pre-existing physical or mental condition from an incident that occurred on or about **February 25, 2003**, at or near **First Street between Abbott and Michigan**, in which [redacted] sustained alleged injuries.

I understand that the payment set forth herein represents the compromise of a disputed claim and the judgment entered on December 7, 2005, in the principal amount of [redacted], costs in the amount of [redacted], attorney fees in the amount of [redacted] and interest thereon in the amount of [redacted], in Wayne County Circuit Court No. [redacted] said judgment having been appealed by the City in Michigan Court of Appeals No. [redacted] and such payment is not to be construed as an admission of liability on the part of the City of Detroit, its employees, agents or contractors who all expressly deny any liability.

**THIS RELEASE AND AGREEMENT** constitutes the entire understanding between the parties hereto and any other agreement made by them, or any of them, at any time prior hereto with respect to the foregoing shall not be of any force or effect and the provisions hereof are and shall be



[redacted]

binding upon and shall inure to the benefits of the respective heirs, executors, administrators, successors of the within mentioned parties forever.

IN WITNESS WHEREOF, the undersigned have hereunto affixed the signatures appearing below at _____, Michigan, on _____, 2006.

**Witnessed By:**

_____ _____

[redacted]

_____
Address

_____

_____
Social Security Number

_____ _____

**CARY M. MAKROUER (P-26831)**
Attorney of above party or parties

Signature of Husband/Wife of above

_____

_____
Social Security Number

SSN or Employer ID#

_____
Address

STATE OF MICHIGAN_____)
)SS
COUNTY OF _____)

On _____, 2006, before me personally appeared the above-named parties, to me personally known to be the same person(s) described in and who affixed the signature(s) upon the foregoing instrument in my presence and who stated on oath that each has read or has heard read the contents thereof which has been understood by each and that such contents are true and that same has been executed as the free and voluntary act of the signer(s) thereof.

_____

NOTARY PUBLIC, _____ COUNTY, MI

My Commission Expires: _____

000267

[redacted]

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

[redacted]

Plaintiff,

v

Case No. [redacted]
Judge Daphne Means Curtis

City of Detroit,

Defendant.
_____/

## STIPULATION TO DISMISS CAUSE

Having reached an amicable resolution of this matter, the parties in the above-entitled cause by their respective attorneys, hereby stipulate and agree that an Order be entered forthwith dismissing the said cause with prejudice and without costs and attorney fees to any party.

**CARY M. MAKROUER (P-26831)**
Attorney for Plaintiff
1000 Town Center, Ste. 500
Southfield, MI 48075-1221
(248) 354-2222

**SHERI L. WHYTE (P-41858)**
Attorney for Defendant
660 Woodward Avenue
1650 First National Building
Detroit, MI 48226
(313) 237-3076

## ORDER TO DISMISS CAUSE

At a session of the said Court held
in the Courthouse, City of Detroit,
County of Wayne, Michigan on _____

PRESENT: HONORABLE _____

Upon the reading and filing of the Stipulation annexed hereto, and the Court being fully advised in the premises;

IT IS HEREBY ORDERED that the within cause be dismissed with prejudice and without costs and without attorney fees to any party.

This Order resolves the last pending claim and closes the case.

000268

_____
CIRCUIT COURT JUDGE

[redacted]

Plaintiff's Name: [redacted]
FILE NO.: [redacted]
DEPT. CODE: [redacted]
Accident Code: [redacted]

# SETTLEMENT ROUTING SLIP

PLEASE PLACE YOUR INITIALS IN THE SPACE PROVIDED AFTER YOU HAVE REVIEWED THE DOCUMENT AND FORWARD TO THE NEXT PERSON INDICATED.

| | *INITIALS* | *DATE* |
|---|---|---|
| TYPIST | SLW | 11/06/06 |
| ATTORNEY (SLW) | _____ | 11/06/06 |
| TEAM LEADER | _____ | _____ |
| ADMINISTRATION | _____ | _____ |
| SUBMITTED TO SETTLEMENT DESK | _____ | _____ |
| COPY TO COUNCIL | _____ | _____ |

000270

# !!!DO NOT DISCARD THIS PAGE!!!

## FORWARD THIS PAGE TO THE SETTLEMENT DESK ALONG WITH THE WRITE-UP

[redacted]

CASE NO. [redacted]
FILE NO. [redacted] (SLW)

CARY M. MAKROUER
Attorney for Plaintiff
1000 Town Center, Ste. 500
Southfield, MI 48075-1221
(248) 354-2222



[redacted]

SHERI L. WHYTE
LITIGATION DIVISION
DIRECT DIAL 313•237•3076
E-MAIL: WHYTS @LAW.CI.DETROIT.MI.US

April 23, 2008

CARY M. MAKROUER
1000 Town Center, Ste. 500
Southfield, MI 48075-1221

RE: [redacted] v City of Detroit
WAYNE COUNTY CIRCUIT COURT CASE NO.: [redacted]
MICHIGAN COURT OF APPEALS NO. [redacted]

Dear Mr. Makrouer:

Enclosed you will find an original and two copies of the Release and Agreement and the proposed Stipulation to Dismiss the appeal in connection with the above-referenced matter.

1. Please have your client sign all copies of the Release And Agreement and provide us with her Social Security Number and current address.
2. The form requires witness signature(s) and complete notarization.
3. Please include your SSN or Employer ID number – without it we will be unable to process the payment.
4. Please do not alter the Release And Agreement. If you wish to make changes, please contact the undersigned. A revised Agreement will be prepared by this office and forwarded to you.
5. Please sign the Stipulation To Dismiss the appeal. This office will submit the documents to the Court of Appeals.

**Omission of any of the above required information will delay processing the settlement check. Faxed copies are not acceptable; original signatures are needed on all documents.** Should you have any questions or concerns regarding the releases please contact **Sheri L. Whyte.**

After all documents are executed and returned, a settlement check will be mailed to you as soon as practicable. When returning the documents, please mail them to the above address, **ATTN: Sheri L. Whyte.**

Very truly yours,

Sheri L. Whyte
Assistant Corporation Counsel

000272

SLW:slw
Enclosures

November 6, 2006

**HONORABLE CITY COUNCIL**

RE: [redacted] v City of Detroit
WAYNE COUNTY CIRCUIT COURT CASE NO.: [redacted]
MICHIGAN COURT OF APPEALS NO.: [redacted]
FILE NO.: [redacted] (SLW)

We have reviewed the above-captioned lawsuit, the facts and particulars of which are set forth in a confidential memorandum that is being separately hand-delivered to each member of Your Honorable Body. From this review, it is our considered opinion that a settlement in the amount of [redacted] is in the best interest of the City of Detroit.

We, therefore, request authorization to settle this matter in the amount of [redacted] and that Your Honorable Body direct the Finance Director to issue a draft in that amount payable to [redacted] **and her attorneys, THE THURSWELL LAW FIRM, P.L.L.C.,** to be delivered upon receipt of properly executed Releases and Stipulations and Orders of Dismissal entered in Wayne County Circuit Court No. [redacted] and Michigan Court of Appeals No. [redacted] approved by the Law Department.

Respectfully submitted,

FRANK E. BARBEE
Chief Assistant Corporation Counsel

**APPROVED:**

JOHN E. JOHNSON, JR.
Corporation Counsel

BY: _____
Brenda E. Braceful
Deputy Corporation Counsel

000273

FEB:SLW:slw
Attachments

[redacted]

# RESOLUTION

**BY COUNCIL MEMBER:**

**RESOLVED**, that settlement of the above matter be and is hereby authorized in the amount of [redacted] and be it further

**RESOLVED**, that the Finance Director be and is hereby authorized and directed to draw a warrant upon the proper account in favor of [redacted], **Deceased,** by [redacted] **Personal Representative and her attorney, THEOPHILUS E. CLEMONS,** in the amount of [redacted] in full payment for any and all claims which **the Estate of** [redacted] **deceased,** may have against the paramedics, [redacted] as a result of alleged injuries sustained on October 14, 1998, when [redacted], deceased, claims exacerbation of an injury as a result of the defendants failure to defibrillate [redacted] at his home after suffering a heart attack, and that said amount be paid upon receipt of properly executed Releases and Stipulation and Order of Dismissal entered in Lawsuit No. [redacted] approved by the Law Department.

**APPROVED:**

RUTH C. CARTER
Corporation Counsel

000274

BY: _____
Allan Charlton, Chief
Assistant Corporation Counsel

[redacted]